MBf Capital Bhd & Anor v Tommy Thomas & Anor and other suits

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-23-52 OF 1996 AND OTHER SUITS
KAMALANATHAN RATNAM J
4 DECEMBER 1998

Civil Procedure *— Contempt of court — Failure to comply with court order — Plaintiffs sued defendant for defamation — Settlement reached and read in open court — Undertaking by defendant — Defendant later nullified proceedings — Whether defendant should be cited for contempt — Whether defendant should be given custodial sentence — Whether Bar Council should be allowed to have watching brief*

The plaintiffs commenced defamation actions against the defendant for his quoted remarks in an article entitled 'Malaysian Justice on Trial' published in a legal journal called 'The International Commercial Litigation'. Upon coming to terms of settlement which was read in open court, the defendant accepts that none of the plaintiffs was guilty of the procurement of special favours or of any impropriety whatsoever in the litigation described in the article and apologized to the plaintiffs. The defendant also gave an undertaking to the plaintiffs that he will not repeat or publish the said words in the article and a substantial sum in damages was paid to the plaintiffs.

However, subsequent to the recording of the settlement, the defendant faxed a message to three daily newspapers, saying that the settlement of the defamation actions was initiated and insisted upon by the insurance company and it was against his wishes. The defendant later retracted the press statement. The court issued the defendant a notice to show cause on why he should not be cited for contempt. At the hearing of the notice to show cause, the defendant did not oppose the said notice, but only wanted to mitigate. Counsel for the defendant submitted that there is a trend not to impose a custodial sentence when an apology has been tendered immediately. There was also an application by the Bar Council of Malaysia to hold a watching brief in respect of the show cause hearing.

Held, finding the defendant guilty of contempt and sentencing him to six months' imprisonment:

(1) The defendant had not been honest with the court. His explanation that the press statement which said that 'the actions were settled despite his express objections' was meant for the insurers did not hold any merit. It would be an insult to the intelligence of the court to expect the court to accept that explanation. Since the defendant was not challenging the notice to show cause and indicated his intention to only mitigate, he was therefore guilty of issuing a press statement in breach of a court order (see p 151B–C).

(2) The defendant should have refrained from making any press statement without first consulting with his solicitors. His insistence in continuing to maintain his explanation that he had merely intended to convey his opposition to any settlement to the insurers only was a clear indication that he was not fully and completely contrite and remorseful. As such, a caution and discharge was totally unacceptable. This was a clear case where a custodial sentence was necessary (see pp 152H and 153E–G).

(3) Although the Bar Council controls and regulates its members, it ought not to be construed as a licence at large to hold a watching brief. The three grounds provided under common law to enable the Bar Council to make the application for a watching brief hadno basis here. Further, since the Bar Council relied on the Legal Profession Act 1976, such reliance must be taken as an abandonment of its reliance on common law (see pp 147F–G and 148D–E); *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273 followed; *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 and *PP v Seeralan* [1985] 2 MLJ 30 distinguished.

[Bahasa Malaysia summary

Plaintif-plaintif telah memulakan tindakan-tindakan fitnah terhadap defendan kerana kenyataan yang disebutnya di dalam sebuah artikel berjudul 'Malaysian Justice on Trial', yang diterbitkan oleh sebuah jurnal undang-undang yang dipanggil 'The International Commercial Litigation'. Setelah mencapai penyelesaian yang telah dibaca di dalam mahkamah terbuka, defendan telah menerima bahawa tiada seorang pun daripada plaintif-plaintif yang bersalah ke atas pemerolehan pertolongan khas atau apa-apa ketidaksopanan di dalam litigasi yang dinyatakan di dalam artikel tersebut dan telah meminta maaf kepada plaintif-plaintif. Defendan juga telah memberi akujanji kepada plaintif-plaintif yang dia tidak akan mengulangi atau menerbitkan perkataan-perkataan di dalam artikel tersebut dan sejumlah wang yang cukup banyak telah dibayar kepada plaintif-plaintif.

Walau bagaimanapun, selepas sahaja rakaman penyelesaian tersebut, defendan telah memfaks satu pesanan kepada tiga akhbar harian, mengatakan bahawa penyelesaian bagi tindakan-tindakan fitnah tersebut telah dimulakan dan didesak oleh syarikat insurans itu dan adalah bertentangan dengan kehendaknya. Defendan kemudiannya telah menarik balik kenyataan akhbar tersebut. Mahkamah telah mengeluarkan kepada defendan notis tunjuk sebab mengapa dia tidak boleh disabitkan dengan kesalahan menghina mahkamah. Di perbicaraan notis tunjuk sebab tersebut, defendan tidak mempertikaikan notis tersebut, tetapi hanya hendak meringankannya. Peguam defendan menghujahkan bahawa terdapat satu arah aliran untuk tidak menjatuhkan hukuman penjara apabila

A defendan telah meminta maaf dengan segera. Terdapat juga permohonan daripada Majlis Peguam Malaysia untuk mengadakan arahan memerhati berkenaan dengan perbicaraan tunjuk sebab itu.

Diputuskan, mendapati defendan bersalah di atas penghinaan mahkamah dan menjatuhkan hukuman enam bulan penjara:

B (1) Defendan tidak jujur kepada mahkamah. Penerangannya yang menjelaskan bahawa kenyataan akhbar yang berbunyi 'tindakan-tindakan tersebut telah diselesaikan walaupun dibantahnya' telah dimaksudkan kepada syarikat insurans, tidak bermerit. Ianya menyindir kepandaian mahkamah jika mahkamah diharapkan C menerima penerangannya itu. Oleh kerana defendan tidak mempertikaikan notis tunjuk sebab tersebut dan hendak meringankannya sahaja, beliau telah bersalah di atas pengeluaran kenyataan akhbar sambil memungkiri perintah mahkamah (lihat ms 150H–I dan 151B–C).

D (2) Defendan sepatutnya menahan diri daripada membuat kenyataan akhbar tanpa dahulunya berunding dengan peguamcara-peguamcaranya. Ketegasan beliau untuk berterusan mengekalkan penjelasannya yang beliau hanya bertujuan memberikan tentangannya terhadap sebarang penyelesaian kepada penanggung insurans sahaja, adalah tanda jelas bahawa beliau E tidaklah penuh sesal. Kerana itu, satu amaran dan pelepasan tidak boleh diterima. Ini adalah satu kes jelas di mana satu hukuman penjagaan adalah diperlukan (lihat ms 152H dan 153E–G).

(3) Walaupun Majlis Peguam mengawal ahli-ahlinya, ia tidak sepatutnya ditafsirkan sebagai lesen untuk mengadakan arahan memerhati. Ketiga-tiga alasan yang diberikan di bawah common F law untuk membolehkan Majlis Peguam untuk membuat permohonan untuk satu arahan memerhati tidak mempunyai dasar di sini. Lagi, oleh kerana Majlis Peguam telah bergantung kepada Akta Profesyen Undang-Undang 1976, pergantungan tersebut mestilah diambil sebagai penghentian pergantungannya G ke atas common law (lihat ms 147F–G dan 148D–E); *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273 diikut; *Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 dan *PP v Seeralan* [1985] 2 MLJ 30 dibeza.]

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Notes

For a case on failure to comply with court order, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) para 1124.

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Cases referred to

An Advocate & Solicitor, Re; Ex parte The Law Society of Singapore for Judicial Review [1987] 2 MLJ 21 (refd)

Anthony Ratos s/o Domingos Ratos v City Specialist Centre Sdn Bhd [1996] 3 MLJ 349 (refd)
Arthur Lee Meng Kwang v Faber Merlin Malaysia Bhd & Ors [1986] 2 MLJ 193 (distd)
Bar Council, Maharashtra v MV Dabholkar [1975] AIR 2092 (refd)
Caxton (Kelang) Sdn Bhd v Susan Labrooy & Anor [1988] 2 MLJ 604 (refd)
Chandra Sri Ram v Murray Hiebert [1997] 3 MLJ 240 (refd)
Dr Leela Ratos & Ors v Anthony Ratos s/o Domingos Ratos & Ors [1997] 1 MLJ 704 (refd)
PP v Seeralan [1985] 2 MLJ 30 (distd)
Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application [1990] 1 MLJ 273 (folld)
Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal [1995] 3 MLJ 549 (refd)

Legislation referred to

Legal Profession Act 1976 ss 42(1)(a), (e), 57(d), 103E(1), (2), (3), (4)
Rules of the High Court 1980 O 78 r 5(2)

Cecil Abraham (*Darryl Goon*, *Gurmeet Kaur* and *Raja Aileen Soraya* with him) (*Raja Darryl & Loh*) for the defendant.
Zaitun Zawiyah bte Putih on behalf of the Attorney General's Chambers.
Mah Weng Kwai on behalf of the Bar Council of Malaysia.

Kamalanathan Ratnam J:

Facts

All these actions arise out of an article published in a specialist legal journal called 'International Commercial Litigation'. The said publication is available in many countries including Malaysia. The impugned article was a cover story entitled 'Malaysian Justice on Trial'. The article considered in damaging terms various decisions of the Malaysian courts in respect of certain named cases. The gravamen of the complaint about the article in the suits by the plaintiffs was that the said article accused the lawyers acting for the plaintiffs in the named suits of complicity in, or at least connivance at, improperly seeking to obtain favours from the judges concerned in the litigation in which they were involved.

These actions in defamation were commenced by the plaintiffs to vindicate their good names and to obtain damages done by the publication of the said article.

One Mr Tommy Thomas, an advocate and solicitor of the courts of Malaysia and a defendant in the suits herein, was acting as a solicitor for one of the parties in the suits giving rise to the said article.

After numerous case managements, I had fixed Suit No S2–23–52–96 for hearing commencing on 21 October 1998 to be continued until its conclusion. The other four suits had been registered in different courts of the same civil division.

Just before the trial date, all parties negotiated an amicable settlement of their various disputes. All parties then wrote to the Chief Judge of Malaya for his consent to have the other four suits transferred to my court so that matters could be put to rest. With the consent of the Chief Judge of Malaya, the four suits were then transferred to my court to be disposed off together.

Pursuant to O 78 r 5(2) of the Rules of the High Court 1980, the parties by consent forwarded to me for my approval, their draft statement which was to be read in open court. After I had approved the said joint statement, the parties then prepared their final approved statement to be read in open court.

On 21 October 1998, when all parties appeared before me, Dato' Siva read the terms of the settlement on behalf of the plaintiffs. He read para 11 of the statement which was as follows:

> For his part, Mr Tommy Thomas sincerely regrets that his remarks should have been taken in the context of which they appeared in the article, to amount to a charge by him of impropriety on the part of the plaintiffs. This was not his intention. Mr Tommy Thomas had agreed to acknowledge publicly through his counsel that he unreservedly accepts that none of the plaintiffs was guilty of procurement of special favours or of any impropriety whatsoever in the litigation described in the magazine article. He unreservedly apologizes to the plaintiffs and each of them for his quoted remarks in the article.

Mr Christopher Foo who appeared on behalf of Mr Tommy Thomas read out in open court the terms of the settlement on behalf of Mr Tommy Thomas. I reproduce the text of his statement:

> On behalf of the defendant, Mr Tommy Thomas, I associate myself with everything my learned friend has said.
>
> Mr Tommy Thomas is anxious through me to convey to the plaintiffs and each of them his profound regrets for the contributions which Mr Tommy Thomas made to this article by speaking to the journalist in advance of his writing it. Mr Tommy Thomas unreservedly accepts that none of the plaintiffs was guilty of the procurement of special favours or of any impropriety whatsoever in the litigation described in the article. He unreservedly apologizes to the plaintiffs and each of them for his remarks in the article. Mr Tommy Thomas confirms that it was not his intention to accuse any of the plaintiffs of having been guilty of any impropriety.
>
> Mr Tommy Thomas also hereby gives an undertaking to Dato' V Kanagalingam, Tan Sri Dato' Vincent Tan Chee Yioun, Berjaya Industrial Bhd, Berjaya Corp (Cayman) Ltd, MBf Capital Bhd, MBf Northern Securities Sdn Bhd, Insas Bhd and Megapolitan Nominees Sdn Bhd that he will not repeat or publish the said or any similar words attributed to him in the article.

In addition to the apologies tendered by the defendants, I was told that a substantial sum in damages was paid to the plaintiffs.

Upon recording the settlement, I read in open court my judgment dated 21 October 1998. I said as follows:

> It is now clear that the open court statement by the defendants puts paid to any suggestion that it is open to a litigant or his counsel to buy justice in this country. The unfounded and contumelious allegations made without any basis that justice is for purchase compels me to say a few words, notwithstanding the magnanimous gesture of repentance by the defendants.
>
> Falsehood continuously repeated takes on the mantle of truth. Allegations of improper conduct by the plaintiffs and their counsel in complicity with judges were the basis for these suits to have been commenced. The unreserved apology tendered herein completely vindicates the plaintiffs and their counsel and needless to say, reinforces the belief that the scales of justice in this country are ever evenly balanced.
>
> It is my fervent hope that with the closure of all these cases and the amicable settlement arrived at by all parties, everyone, will see the futility of 'shooting from the hip'. With this settlement effected, I trust that all parties will now join hands in forgiveness, for who is man to harbour and nurture anger when God Himself forgives.

Subsequent events

I would have thought that that would have put paid to a painful and traumatic episode in the life of Mr Tommy Thomas and the rest of the defendants. But that was not to be. Fate and destiny had their own plans for Mr Tommy Thomas.

I cannot understand the conduct of Mr Tommy Thomas subsequent to the recording of the settlement on 21 October 1998 and the fact that he chose not attend court himself on the eventful day. However, that same day, whilst his lawyers must have revelled in the euphoria and relief of a settlement thus averting a lengthy and protracted litigation, Mr Tommy Thomas had effectively nullified the proceedings before me by planning to renege on the very terms that were read out in open court. That very day, he faxed a message to three daily newspapers with wide circulation, namely 'The Star', the 'Sin Chew Jit Poh' and the 'Nanyang Siang Pau'. The message in 'The Star' appeared on 22 October 1998 at p 2. After narrating the open court statement read out by counsel for Mr Tommy Thomas, the message concluded with a final paragraph which reads as follows:

> Later in the evening, in a statement, Thomas said: 'The settlement of the defamation actions was initiated, brokered and insisted upon entirely by the insurers. The actions were settled despite my express objections.

The translated statement appearing in the 'Sin Chew Jit Poh' dated 22 October 1998 reads as follows:

> Practising lawyer Tommy Thomas today said that the settlement of the defamation actions brought by corporate figure Tan Sri Vincent Tan and seven others against him and Messrs Skrine & Co was initiated and insisted upon entirely by the insurers.

A He said in a statement issued by him that the actions were settled despite his express objections.

The translated statement appearing in the 'Nanyang Siang Pau' dated 22 October 98 reads as follows:

B Lawyer Tommy Thomas on whom defamation actions have been taken by Berjaya Group's helmsman Tan Sri Vincent Tan, Insas Bhd, lawyer VK Lingam and others, claiming over RM200m in compensation, today issued a short statement stating that he was forced to settle the actions with the plaintiffs upon the insurers' insistence.

He said it was not his wish to settle the actions out of court, pointing out that it was the insurers which initiated the settlement.

C

Realizing the folly of his action, Mr Tommy Thomas then faxed a retraction of the press statement to the same three newspapers. His retraction appeared in 'The Star' on 23 October 98 and it reads as follows:

D Lawyer Tommy Thomas issued a statement yesterday retracting the one he made on Wednesday over the reaching of the settlement of the defamation suits against him and his firm Skrine & Co.

Thomas has requested The Star to publish that 'he wishes to retract and withdraw in its entirety the statement that he made in relation to the settlement of the defamation actions' which appeared in yesterday's newspaper.

E On Wednesday, tycoon Tan Sri Vincent Tan and four others settled their multi-million ringgit defamation suits against Thomas and K Anantham of Skrine & Co for an undisclosed sum after their apologies were recorded in the High Court.

F The defendants and their firm were sued by Tan, lawyer Dato' VK Lingam, MBf Capital Bhd, MBf Northern Securities Sdn Bhd, Insas Bhd and Megapolitan Nominees Sdn Bhd, over remarks by Thomas and Anantham in an article 'Malaysian Justice on Trial' published in the November 1995 issue of the London-based 'International Commercial Litigation' magazine.

The said retraction appeared in the 'Nanyang Siang Pau' on 24 October G 1998 and it reads as follows:

Lawyer Tommy Thomas has retracted his statement released to the press in respect of settlement out of court in the defamation suit by Tan Sri Vincent Tan and others.

H When interviewed by Nanyang Siang Pau today, he confirmed that he wished to retract his statement in respect of settlement of the above case. At that time, he said he had to settle the case out of court two days ago because the insurance company insisted in doing so. Settling out of court was not his wish but was the own initiative of the insurance company instead.

I In this defamation suit, Tommy Thomas and another lawyer, K Anantham, were sued for defamation by Berjaya Group top man Tan Sri Vincent Tan, MBf Capital and Southern Warrants, Insas Co Ltd, Megapolitan Trust Management Co and lawyer Dato' VK Lingam, claiming for RM290m as reputation damages.

The said retraction appeared in the 'Sin Chew Jit Poh' on 7 November 1998 and it reads as follows:

> Tommy Thomas, a practising lawyer retracted his statement released on 21 October 1998 by him after the settlement out of court on a defamation suit filed by Tan Sri Vincent Tan and others.
>
> Thomas requested Sin Chew Jit Poh to publish that he 'wishes to retract his statement released by him in respect of the defamation suit which was settled out of court'.
>
> Thomas had released a statement on 21 October 1998 saying that the insurance company has insisted and initiated in settling the matter out of court despite his objection.
>
> In his statement dated 22 October 1998, he said he would like to retract his statement released on the 21 October 1998.
>
> Due to some technicality problems, this statement to retract his earlier statement is therefore released late.

Notice to show cause

This court then of its own motion issued to Mr Tommy Thomas a notice to show cause why he should not be cited for contempt for issuing press statements in breach of his own statement read in open court wherein he:

(a) tendered an unreserved apology and publicly acknowledged through his counsel that he unreservedly accepted that none of the plaintiffs was guilty of the procurement of special favours or of any impropriety whatsoever in the litigation described in the magazine article; and

(b) undertook that he would not repeat or publish the said or any similar words attributed to him in the article.

Application by the Bar Council to hold a watching brief

On 30 November 1998, the day fixed for the hearing of the notice to show cause, Mr Mah Weng Kwai rose to apply, on behalf of the Bar Council of Malaysia ('the Council'), for leave to hold a watching brief in respect of the show cause hearing. He made it clear that the Council was not seeking to be made a party nor did it intend to claim any relief or remedy. He was directed by the Council to hold a watching brief in these proceedings which he said would affect the advocate concerned and the profession as a whole. Since the Council represents all lawyers in the profession affected by questions of the sort that could be considered in these proceedings, he argued that he might be of assistance if requested by the court. He submitted that the common law has recognized three bases for the Council to be eligible to hold a watching brief.

(a) *Statutory basis*

Mr Mah referred me to s 42 of the Legal Profession Act 1976 ('the LPA') and in particular to s 42(1)(a) and (e) and also to s 57(d). The said sections read as follows:

A 42 Object and powers of the Bar

(1) The purpose of the Malaysian Bar shall be —

(a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;

(e) to represent, protect and assist members of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;

57 Specific powers of the Bar Council

Without prejudice to the general powers conferred by section 56 or the specific powers to make rules conferred by any other provisions of this Act the Bar Council shall have power —

(d) to examine and if it considers fit to report upon current or proposed legislation and any other legal matters; ...

When I pointed out to Mr Mah that there was no relevance between the cited sections and his application before me, Mr Mah readily conceded that he had no fear that I would not dispense justice nor did he have any apprehension of influence by fear or favour.

To a direct question by the court over whom he was holding a watching brief, Mr Mah in his usual candid manner, conceded that he was neither holding a watching brief over the judge nor over the conduct of the four counsel representing Mr Tommy Thomas nor over the conduct of Dato' Zaitun who was representing the Attorney General nor was he holding a watching brief over Mr Tommy Thomas. Mr Mah repeatedly maintained that he was holding a watching brief in the interest of justice and of the profession as a whole. When I pointed out to him that he had earlier readily conceded that he had no fear that justice would be meted out in this court, Mr Mah evinced no reply.

To my mind, the sections relied on by Mr Mah in no way support his cause in respect of his entitlement to hold a watching brief. Besides, having stated that the common law gave the Council three bases for making the application, the reliance on statutory provisions must be taken as an abject abandonment of reliance on common law bases. I therefore rejected this basis.

(b) *Sufficient interest basis*

In support of the next basis relied on by the Council, Mr Mah referred me to the celebrated case of *Arthur Lee Meng Kwang* v *Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 and suggested that this case supports the proposition that where parties can show 'sufficient interest' in the matter before the court, they ought to be heard. I am afraid it is not as simple as put by Mr Mah. In that case, Faber Merlin Malaysia Bhd ('Faber'), the parties who initiated the contempt proceedings against Arthur Lee were in fact the successful parties in two civil suits from which the contempt proceedings arose. In the circumstances, the then Supreme Court held that Faber indeed had sufficient interest to give them the locus standi to be heard. The next case referred to me was *Re An Advocate & Solicitor; Ex parte*

The Law Society of Singapore for Judicial Review [1987] 2 MLJ 21. There the Law Society of Singapore applied for a mandamus in the High Court to direct the disciplinary committee of the Law Society to investigate all charges against a lawyer since it had held certain charges as not requiring investigation. It was argued that the role of the Law Society under the Legal Profession Act was that of an amicus curiae. However, both the High Court and the Court of Appeal held that the Law Society had sufficient interest to have locus standi to apply for a mandamus. And I would think rightly so. As to what constitutes locus standi, Siti Norma J (as she then was) said in *Caxton (Kelang) Sdn Bhd v Susan Joan Labrooy & Anor* [1988] 2 MLJ 604 at p 606:

> The proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which is usually referred to as 'standing' or 'locus standi'.

But there is a great difference between holding a watching brief and having a locus standi. In respect of the former, a party applying is invariably not a party to the suit and counsel given such leave to sit in the proceedings will have no say at all, save and except at the invitation of the court. This 'sufficient interest' argument raised by the Council again has no basis. Whilst I agree that the Council controls and regulates its members, that per se ought not to be construed as a licence at large to hold a watching brief. Each case has to be considered on its own merits. This submission in respect of this case is unmeritorious.

(c) *Person aggrieved*

Mr Mah argued that pursuant to s 103E of the LPA, the Council is a 'person aggrieved'. Section 103E reads as follows:

> Appeal from the decision of the Disciplinary Board
>
> (1) Any party aggrieved by any decision or order made by a Disciplinary Board shall have the right to appeal to the High Court within one month of notification of the decision or order complained against.
>
> (2) The appeal shall be fixed for hearing before three Judges of the High Court.
>
> (3) Any party aggrieved by the decision of the High Court shall have the right to appeal to the Federal Court within one month of the decision of the High Court.
>
> (4) The Bar Council may in its discretion intervene at any stage of any appeal under this section.

It is obvious therefore that the person aggrieved in respect of s 103E is a person affected by a decision of the disciplinary board and he will thus have a right to appeal to the High Court and any person aggrieved by the decision of the High Court has a right of appeal to the Federal Court. I cannot therefore accept this argument as having any basis. In fact, the very case cited by Mr Mah, namely *Bar Council, Maharashtra v MV Dabholkar* [1975] AIR 2092, which deals with s 38 of the Advocates Act 1961 relates to the right of a person aggrieved to appeal to the Supreme Court of India from an

order made by the disciplinary committee of the Bar Council. Having argued initially that the Council is the person aggrieved, Mr Mah then argued that in contempt proceedings affecting the profession, the advocate concerned is a person aggrieved. He then further argued to say that if Mr Tommy Thomas is the person aggrieved, then the profession is 'a person aggrieved' by virtue of the fact that Mr Tommy Thomas is a member of the profession.

I find these contrary submissions puzzling. Even if Mr Tommy Thomas is the 'person aggrieved', then surely it must be he who must make the application. But he is the person facing the notice to show cause and is well and truly represented by four counsel to protect his interest. The next argument that the profession is the 'aggrieved person' is totally unacceptable. A profession by itself has no locus. It has no breath and no life and thus can never be a person let alone be aggrieved. Finally, Mr Mah submitted that the Council has always been recognized as having a useful presence in court in respect of matters affecting the conduct of an advocate and solicitor. He referred me to *PP v Seeralan* [1985] 2 MLJ 30 where the then Supreme Court granted the Council a right to hold a watching brief. I cannot accept that as binding on me as the matter of holding a watching brief was never an issue. There was an application made to the court and in all magnanimity, the Supreme Court allowed the Council's application.

In so far as this court is concerned, I am satisfied that Mr Tommy Thomas is adequately represented by senior practitioners and assisted by able juniors. I do not need the assistance of the Council.

I then posed a question to Mr Mah. It was this:

> Assuming the court finds against Mr Tommy Thomas and arising out of that, if a complaint is lodged with the Council or the disciplinary board, would it not be correct to say that the Bar will have to disqualify itself from participating in that complaint, if I allow the Council's application to hold a watching brief and invited it to assist the court?

Mr Mah in all candour conceded that he needed to research that point.

Since the other counsel present had nothing to say, I dismissed the Council's application to hold a watching brief.

Submission of Mr Cecil Abraham

At the outset, Mr Cecil Abraham for Mr Tommy Thomas conceded that his instructions were not to oppose the notice to show cause but to offer an explanation in mitigation. He submitted that no sooner was the notice to show cause served on him on 2 November 1998, Mr Tommy Thomas had on 3 November 1998 filed an affidavit (encl 216A) exhibiting the retraction made to 'The Star'. In the said affidavit, he had also averred that his press statement 'was never intended in any way whatsoever to embarrass or offend this honourable court'.

His reason for making the press statement is contained in para 5 of his affidavit (encl 216A). It reads as follows:

> With greatest respect to this honourable court, my said statement was in respect of the insurers and it related to how the settlement of the various actions in question came about.

He then also affirmed another affidavit (encl 230) on 27 November 1998 wherein he annexed exhibits showing his retractions made to both the Chinese newspapers.

Mr Cecil Abraham then sought leave to call Mr Tommy Thomas to testify under oath. Before he did that, I read back to Mr Tommy Thomas, Mr Cecil Abraham's concession that he was indeed not opposing the notice to show cause but was only going to mitigate. With his confirmation of what I had read, Mr Tommy Thomas proceeded to mitigate under oath by tendering his written statement marked PW1S in which he confirmed that he stood by the terms of the settlement read out in open court by Mr Christopher Foo, his solicitor. Again, he reiterated that the press statement was issued 'merely to demonstrate the role of the insurers and it related to how the settlement of the various actions was brought about, in so far as the insurers were concerned'. He denied it was his intention to breach his undertaking contained in the statement read out in open court. He then read out another statement which I had marked as S1 wherein he pleaded for mercy and urged this court to accept his unqualified and unreserved apology. He also regretted having issued the press statement in question. He said that the statement was made in haste and occasioned by an accumulation of the stress and fatigue which he had been experiencing during the many months of preparation for the case and with his preoccupation with the insurers. Having realized the error of his action, he took immediate remedial steps and proceeded to retract his statement. He ended by again apologizing to the court.

The court then asked him to explain why he had said in the press statement that the 'actions were settled despite my express objections'. His answer was 'I say it was never for a moment meant to reflect on the court or on the parties and I am sorry it has received that interpretation'. Mr Cecil Abraham then asked Mr Tommy Thomas to whom the words 'express objections' were directed and Mr Tommy Thomas answered that it was to the insurers. When asked by Dato' Zaitun representing the Attorney General, at my invitation, what was the necessity to make the sort of statement, Mr Tommy Thomas's answer was that it was made in haste. When pressed further as to why such a statement was made through the press, he apologized for causing the interpretation that is put to it now.

Findings of the court

Since Mr Tommy Thomas was not challenging the notice to show cause and indicated his intention to only mitigate, I therefore find him guilty of the offence of issuing a press statement in breach of a court order after he had authorized the reading of a statement in open court by his counsel.

It is appropriate for me at this juncture to refer to an old Roman saying:

> 'Quem deus pendere vult prius dementat'. Translated it means 'Whom the God wishes to destroy he first makes mad'.

Mr Tommy Thomas is a very senior member of the Bar and has been acting as lead counsel in many leading cases so often found in the law journals. He is not a fledging lawyer, unaware of the ramifications of acting in haste. I have searched through the evidence and re-read the affidavits. I have perused in detail each argument of Mr Abraham in mitigation. The pages are full of words expressing remorse and contrition. Yet to my mind, I find that Mr Tommy Thomas has not been honest with the court. He has, in my view, not come clean. His explanation that the press statement which said that 'the actions were settled despite my express objections' was meant for the insurers, rang so hollow that it was almost an insult to the intelligence of the court to expect this court to be so gullible as to accept that explanation. He was asked both by me and Dato' Zaitun why he had to deal with the insurers through the press and even then, he failed to come clean.

Surely every motor car owner knows that in the event that one meets with an accident, the insurers will take over. In spite of protestations of innocence, invariably the insurers will settle with the party making a claim. If one still legitimately feels affronted by the settlement, one deals directly with the insurers.

To my mind, it is patently clear that by making an immediate statement in the press that the settlement was effected despite his express objections, Mr Tommy Thomas intended to portray to the world at large that he was never a willing party to the settlement. Having made disparaging and contumelious aspersions against the plaintiffs in the impugned article and having surreptitiously dragged the judiciary into the fray, Mr Tommy Thomas was a besotted adversary who would not sheath his sword until he had had the last say.

But alas for him, his anger and frustration has led him to his present predicament. Even to the very end, he is not prepared to come clean, bare his soul and then seek the court's compassion.

Mr Cecil Abraham in his valiant effort to prevent any custodial sentence referred me to numerous cases including the case of *Dr Leela Ratos & Ors v Anthony Ratos s/o Domingos Ratos & Ors* [1997] 1 MLJ 704, where for an act of misleading the court and after taking heed of the stern warning given by the Federal Court in *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273 at p 277 that it would not hesitate to impose custodial sentence in cases of contempt of court, I had sentenced Mr MS Murthi, a senior advocate and solicitor, to a day's imprisonment and RM50,000 as fine in default six months' imprisonment.

Mr Abraham also referred me to *Anthony Ratos s/o Domingos Ratos v City Specialist Centre Sdn Bhd (t/a City Medical Centre) (Attorney General, Interverner)* [1996] 3 MLJ 349 wherein the same Mr MS Murthi was charged for contempt before my learned brother Rekhraj JC (as he then was) for a third contempt committed in three weeks, and wherein the learned judge imposed only a fine of RM10,000 in default three months' imprisonment. In that case, the learned judge said very clearly that it was because of the 'special and strong pleas of the Attorney General, Malaysia'

that he had shown mercy. This was because Mr MS Murthi had upon being served with the papers to show cause, promptly approached the Attorney General's Chambers and prostrated himself pleading for mercy. This is clearly stated in the address of the representative of the Attorney General, reported verbatim. This was the reason I had asked Mr Cecil Abraham if any representation had been made to the learned Attorney General and the answer was that there was none. In any case, Dato' Zaitun had not interceded on behalf of Mr Tommy Thomas. Referring also to the case of *Wee Choo Keong v MBf Holdings Bhd* [1995] 3 MLJ 549 wherein the then Supreme Court had substituted a two years term of imprisonment with a fine of RM7,000, Mr Cecil Abraham argued that the trend seems to be not to impose a custodial sentence if there is a prompt and immediate apology.

When I drew his attention to the case of *Chandra Sri Ram v Murray Hiebert* [1997] 3 MLJ 240 wherein my learned brother Low Hop Bing J had sentenced the contemnor to three months' imprisonment, Mr Cecil Abraham pointed out that in that case the contemnor had not shown remorse. He had merely said 'I wish to express regret to this honourable court if what I had written is incorrect.' Further, the proceedings were challenged to the very end.

To my mind, if as according to Mr Cecil Abraham there is a trend not to impose custodial sentence when an apology has been tendered immediately, then it is time to change that trend in the light of the clear signal given by the Federal Court in the *Trustees of Leong San Tong Khoo Kongsi*. However, in this case, whilst Mr Tommy Thomas had apologized on numerous occasions, to my mind such apology is not sincere and open but tainted with reservations. His explanation relating to notice to insurers has been rejected by this court.

He had in open court through his counsel unreservedly apologized to the plaintiffs and to each of them for his remarks in the article. He also confirmed that it was not his intention to accuse any of the plaintiffs of having been guilty of any impropriety. Besides, I had also said that the unreserved apology tendered by the defendants including Mr Tommy Thomas reinforced the belief that the scales of justice in this country are ever evenly balanced, and I even noted that 'everyone will see the futility of shooting from the hip'.

Whilst Mr Tommy Thomas had said that he had not seen my written judgment delivered that same day, copies were readily available from my secretary that very same day. If he had failed to meet with his solicitors and/or to obtain a copy of my short judgment, then all the more was it incumbent upon him to have refrained from making any press statement that very same day without first consulting with his solicitors. His total disregard towards the feelings of the parties and the court in faxing the press statement shows the conduct of an exasperated litigant.

As I was finalizing this judgment, I received a note from Mr Cecil Abraham drawing my attention to a report in 'The New Straits Times' dated 3 December 1998 at p 4 where my learned brother Augustine Paul J had accepted an apology tendered by counsel Mr Manjeet Singh Dhillon in

respect of contempt proceedings brought against him. The contempt proceedings were initiated by the learned judge because of a letter written by Mr Manjeet Singh Dhillon to the learned Attorney General and also because of a statutory declaration he had filed in respect of matters relating to a pending proceeding in which Mr Manjeet Singh Dhillon had made references to the conduct of the learned Attorney General and his officers. The statutory declaration was annexed as an exhibit to an application filed in criminal proceedings presently proceeding against Dato' Seri Anwar Ibrahim. The application sought the removal of two of the public prosecutors in the Anwar Ibrahim trial because of matters mentioned of them in the statutory declaration. Mr Cecil Abraham said in his further written submission as follows:

> My Lord will note from the report of the proceedings, the judicial attitude adopted in the face of an apology. This was despite the seriousness of the contempt which had earlier moved the learned judge to summarily sentence En Zainur Zakaria to three months' imprisonment in a related proceeding. Your Lordship will also note that in Mr Manjeet Singh Dhillon's case, his apology appears to have been couched more in terms of an expression of regret and it was tendered by his counsel. It appears that Mr Manjeet Singh Dhillon nevertheless stood by the letter he had written to the honourable Attorney General.

I make reference to this further submission to show that I have indeed considered it. To my mind, the Manjeet Singh case has no relevance. Whether Mr Manjeet Singh was totally contrite or merely couched his apology in terms of expressions of regret only, was a matter for my learned brother to decide. He made his decision. Besides, in the case before me, I have found that Mr Tommy Thomas' insistence in continuing to maintain his explanation that he had merely intended to convey his opposition to any settlement to the insurers only, was a clear indication that he was not fully and completely contrite and remorseful. There was no need to speak to the insurers through the press.

It is therefore with a heavy heart that I must now pass sentence. As I had indicated during the hearing, a caution and discharge as suggested by Mr Cecil Abraham is totally unacceptable; likewise a fine.

This is a clear case where a custodial sentence is necessary. The contemnor has continued to reflect his personal desire not to be open and candid with the court. Even on the day he was questioned by me, if he had admitted truthfully his purpose for having made such a press statement, this court would have been compassionate. This attempt to insult the intelligence of the court by giving an explanation that not even a novice would want to proffer is an affront to the integrity of this court. I therefore sentence Mr Tommy Thomas to six months' imprisonment.

Defendant found guilty of contempt and sentenced to six months' imprisonment.

Reported by Mohd Rizal Abidin